

BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
STATE OF CALIFORNIA

In the Matter of the Accusation

Against

JOSE C. TORRES, M.D.
1960 Tulane Street
Union City, California
Certificate No. G-34836,

Respondent.

NO. D-2559

N 16410

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical Quality
Assurance as its **Decision in the**
above-entitled matter.

This Decision shall become effective on September 14, 1981.

IT IS SO ORDERED August 13, 1981.



MILLER MEDEARIS
Secretary-Treasurer

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JOSE C. TORRES, M.D.)	NO. D-2559
1960 Tulane Street)	
Union City, California)	N 16410
Certificate No. G-34836,)	
)	
Respondent.)	
)	

PROPOSED DECISION

This matter came on regularly for hearing by Philip V. Sarkisian, administrative law judge of the Office of Administrative Hearings, at San Francisco, California, on June 18, 1981. Wilbert E. Bennett, deputy attorney general, represented the complainant. Respondent Jose C. Torres, M.D., appeared in person and was represented by Chris G. Gasparich, attorney at law. Oral and documentary evidence was introduced and the case was submitted.

The following decision is proposed, certified, and recommended for adoption:

FINDINGS OF FACT

I

Robert Rowland is the executive director of the Board of Medical Quality Assurance, State of California (hereinafter referred to as "Board"). He made the accusation in his official capacity and not otherwise.

II

On or about July 6, 1977, respondent Jose C. Torres (hereinafter referred to as "respondent") was issued

a physician's and surgeon's certificate by the Board, more particularly identified as certificate No. G-34836. The certificate has been in full force and effect at all times material hereto.

III

Cocaine is a Schedule II controlled substance, as defined in section 11055, subdivision (b)(4), of the California Health and Safety Code, and a dangerous drug, as defined in section 4211 of the Business and Professions Code.

IV

On or about July 27, 1979, respondent unlawfully possessed and self-administered Cocaine, a Schedule II controlled substance. On the same date, respondent drove a motor vehicle while under the influence of alcoholic beverages.

V

The misconduct described in paragraph IV was discovered after respondent was stopped by police officers for a traffic violation. Respondent had been at a party where a number of guests had been drinking alcoholic beverages and using Cocaine. After the police officers stopped respondent's car, they discovered a used syringe containing a residue of Cocaine on the car seat. They also observed fresh puncture wounds on respondent's arm. Respondent failed to pass the customary road-side sobriety tests. A breath test revealed the alcoholic content of respondent's blood to be .18 percent. No blood or urine analysis was made to check for the presence of Cocaine in respondent's body, and the finding that he self-administered Cocaine is an inference based on evidence other than a chemical analysis of respondent's blood or urine.

VI

Respondent is 32 years old. He is the medical director of the Tiburcio Vasquez Health Center in Union City, California. He is highly regarded by current and former colleagues and employers for his skill and sensitivity in treating patients under his care. Dr. Torres has demonstrated a commitment to helping provide health services to lower income people, particularly those who speak Spanish. He is bilingual. He has donated his time as a preceptor for minority medical students.

The misconduct in question appears to have been a somewhat isolated event, although he did suffer a conviction for driving under the influence of alcoholic beverages based

on an incident in January, 1980. With this exception, there is no evidence of any other misconduct. There is no evidence that respondent's behavior has in fact interfered with his care of patients. He does not appear to be a danger to his patients.

DETERMINATION OF ISSUES

Separate and several causes for discipline were established as follows:

1. Respondent's self-administration of Cocaine constitutes unprofessional conduct under section 2390 of the Business and Professions Code and thereby constitutes grounds for disciplinary action against respondent pursuant to sections 2360 and 2361 of the Business and Professions Code.

2. Respondent's self-administration of Cocaine constitutes unprofessional conduct under section 2391.5 of the Business and Professions Code in that said conduct violates section 11170 of the California Health and Safety Code, a state statute regulating controlled substances. It thereby constitutes grounds for disciplinary action against respondent pursuant to sections 2360 and 2361 of the Business and Professions Code.

3. Respondent's unlawful possession of Cocaine constitutes unprofessional conduct under section 2391.5 of the Business and Professions Code in that said conduct violates section 11350 of the California Health and Safety Code, a state statute regulating controlled substances. It thereby constitutes grounds for disciplinary action against respondent pursuant to sections 2360 and 2361 of the Business and Professions Code.

4. Respondent's conduct in driving under the influence of alcoholic beverages on July 27, 1979, standing alone, would not ordinarily constitute cause for disciplinary action. However, when this behavior is considered in light of the other facts described in IV and V of the findings of fact, it is determined to constitute unprofessional conduct under section 2390 of the Business and Professions Code. It thereby constitutes grounds for disciplinary action against respondent pursuant to sections 2360 and 2361 of the Business and Professions Code.

ORDER

Certificate No. G-34836 issued to respondent is revoked pursuant to paragraphs 1, 2, 3, and 4 of the Determination of Issues, separately and for all of them.

The order of revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in California.
2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
3. Respondent shall comply with the Division's probation surveillance program.
4. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
5. Respondent shall not prescribe, administer, dispense, order, or possess (except as prescribed, administered, or dispensed to respondent by another person authorized by law to do so) controlled substances as defined by the California Uniform Controlled Substances Act except for those drugs listed in Schedules IV and V of the Act.
6. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by section 4211 of the Business and Professions Code, except those prescribed, administered, or dispensed to respondent by another person authorized by law to do so.
7. Respondent shall comply immediately with requests from the Division's designee to submit to biological fluid testing.
8. Within one year of the effective date of this decision, respondent shall submit to

the Division for its prior approval, a program of approved Category I, Continuing Medical Education, related to the violations found in the decision. The exact number of hours and the specific content of the program shall be determined by the Division or its designee and shall not total less than twenty-five nor more than seventy-five hours per year. This program shall be in addition to the Continuing Medical Education requirements for relicensure. The Division or its designee may also require respondent to pass an examination related to the content of the program.

9. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval the name and qualifications of a psychotherapist of his choice. Upon approval, respondent shall undergo and continue treatment until the Division deems that no further psychotherapy is necessary. To make this determination, the Division may require periodic administrative psychiatric evaluations.
10. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.
11. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's certificate.
12. Upon successful completion of probation, respondent's certificate will be fully restored.

DATED: _____

July 29, 1981
(JUNE)

Philip V. Sarkisian

PHILIP V. SARKISIAN
Administrative Law Judge

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of the State of California
2 WILBERT E. BENNETT
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11 In the Matter of the Accusation)	
Against)	
12 JOSE C. TORRES, M.D.)	
13 1960 Tulane Street)	<u>ACCUSATION</u>
Union City, California)	
14 Certificate No. G-34836,)	NO. D-2559
15 Respondent.)	

16
17 ROBERT ROWLAND, complainant, charges and alleges as
18 follows:

19 1. He is the Executive Director of the Board of
20 Medical Quality Assurance, State of California (hereinafter referred
21 to as "Board"), and makes these charges and allegations in his
22 official capacity and not otherwise.

23 2. On or about July 6, 1977, respondent Jose C. Torres
24 (hereinafter referred to as "respondent") was issued a physician's
25 and surgeon's certificate by the Board, more particularly identi-
26 fied as Certificate No. G-34836. Said certificate has been in
27 full force and effect at all times material hereto.

1 3. Cocaine is a Schedule II controlled substance, as
2 defined in section 11055(b)(4) of the California Health and Safety
3 Code, and a dangerous drug, as defined in section 4211(k) of the
4 Business and Professions Code.

5 FOR A FIRST CAUSE FOR DISCIPLINARY ACTION

6 4. On or about July 27, 1979, respondent unlawfully
7 possessed and self-administered Cocaine, a Schedule II controlled
8 substance.

9 5. Respondent's self-administration of Cocaine, as
10 alleged in paragraph 4, constitutes unprofessional conduct under
11 section 2390 of the Business and Professions Code and thereby
12 constitutes grounds for disciplinary action against respondent
13 pursuant to sections 2360 and 2361 of the Business and Professions
14 Code.

15 FOR A SECOND CAUSE FOR DISCIPLINARY ACTION

16 6. Paragraph 4 is herein incorporated by reference as
17 though fully set forth.

18 7. Respondent's self-administration of Cocaine, as
19 alleged in paragraph 4, constitutes unprofessional conduct under
20 section 2391.5 of the Business and Professions Code in that said
21 conduct violates section 11170 of the California Health and Safety
22 Code, a state statute regulating controlled substances; and there-
23 by constitutes grounds for disciplinary action against respondent
24 pursuant to sections 2360 and 2361 of the Business and Professions
25 Code.

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27 / /

1 FOR A THIRD CAUSE FOR DISCIPLINARY ACTION

2 8. Paragraph 4 is herein incorporated by reference as
3 though fully set forth.

4 9. Respondent's unlawful possession of Cocaine, as
5 alleged in paragraph 4, constitutes unprofessional conduct under
6 section 2391.5 of the Business and Professions Code in that said
7 conduct violates section 11350 of the California Health and Safety
8 Code, a state statute regulating controlled substances; and there-
9 by constitutes grounds for disciplinary action against respondent
10 pursuant to sections 2360 and 2361 of the Business and Professions
11 Code.

12 FOR A FOURTH CAUSE FOR DISCIPLINARY ACTION

13 10. On or about July 27, 1979, respondent engaged in
14 the use of alcoholic beverages to the extent and in such a manner
15 as to be dangerous to himself and to the public, to wit: on said
16 date, he drove an automobile while under the influence of alcoholic
17 beverages.

18 11. Respondent's use of alcoholic beverages, as alleged
19 in paragraph 9, constitutes unprofessional conduct under section
20 2390 of the Business and Professions Code and thereby constitutes
21 grounds for disciplinary action against respondent pursuant to
22 sections 2360 and 2361 of the Business and Professions Code.

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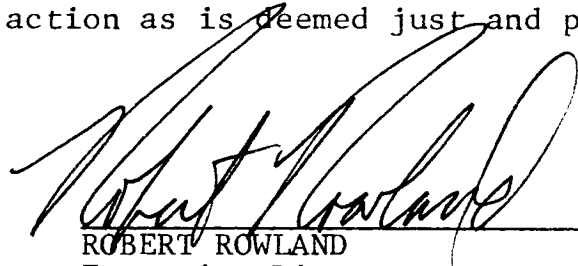
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1 WHEREFORE, it is prayed that a hearing be held to
2 suspend or revoke respondent's physician's and surgeon's certifi-
3 cate and to take such other action as is deemed just and proper.

4 DATED: June 18, 1980



ROBERT ROWLAND
Executive Director
Board of Medical Quality Assurance

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